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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HOLLYNN D'LIL,

CASE NO. \_\_\_\_\_  
Civil Rights

Plaintiff,

v.

EAST WEST CAFÉ; HISAM  
SHABOON; DOE TRUST 1; DAVID  
R. MADSEN; CARLEEN MADSEN;  
HARRY E. POLLEY; JEAN E.  
POLLEY; and DOES 2 through  
50, Inclusive,

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES:** DENIAL OF CIVIL  
RIGHTS OF A DISABLED PERSON IN  
VIOLATION OF THE AMERICANS WITH  
DISABILITIES ACT, AND IN  
VIOLATION OF CALIFORNIA'S  
DISABLED RIGHTS STATUTES

**DEMAND FOR JURY TRIAL**

Defendants.

[Proper Intradistrict Assignment:  
San Francisco/Oakland]

\_\_\_\_\_/

Plaintiff HOLLYNN D'LIL, on behalf of herself and other  
similarly situated disabled persons, hereby complains of  
defendants, including the res and business named EAST WEST CAFÉ,  
also commonly known as the East West Bakery or East West  
Restaurant; HISAM SHABOON; DOE TRUST 1; DAVID R. MADSEN, Trustee  
of DOE TRUST 1; CARLEEN MADSEN, Trustee of DOE TRUST 1; HARRY E.  
POLLEY; JEAN E. POLLEY; and DOES 2 through 50, Inclusive  
(hereafter "defendants"), and demands a trial by jury, and  
alleges as follows:

////

1 **INTRODUCTION**

2 1. The defendants own, operate and/or lease the EAST WEST  
3 CAFÉ located at or near 128 North Main Street, Sebastopol.  
4 Plaintiff is a patron of the restaurant. She has a qualified  
5 disability. Her has a readily observable permanent disability  
6 involving her lower extremities that requires the use of  
7 wheelchair for mobility. She lives less than four miles from the  
8 restaurant in the nearby the nearby town of Graton.

9 2. This is a suit to require defendants to remediate  
10 their restaurant so that it is fully accessible and usable by  
11 persons with disabilities such as plaintiff, per the design  
12 requirements of Title 24 and ADAAG. Defendants maintain  
13 architectural barriers to such use at their entrance, path of  
14 travel to the public restrooms, and within the public restrooms  
15 themselves.

16 3. Provision of full and equal access is required by  
17 virtue of building's construction, alteration and occupancy  
18 history occurring within the statutory period after July 1, 1970.  
19 On information and belief, the restaurant was "altered" during  
20 the statutory period without removal of the aforementioned  
21 architectural barriers. Plaintiff seeks injunctive relief to  
22 require removal of the barriers to meet the requirements of both  
23 California law and the Americans With Disabilities Act of 1990.  
24 Plaintiff also seeks deterrence damages for violation of her  
25 Civil Rights for each date of specific deterrence or use until  
26 such date as defendants bring their public facilities into full  
27 compliance with the requirements of California and federal law.

28 /////

1 **JURISDICTION AND VENUE**

2 4. This Court has jurisdiction of this action pursuant to  
 3 28 U.S.C. 1331 for violations of the Americans with Disabilities  
 4 Act of 1990, 42 U.S.C. 12101, *et seq.* Pursuant to pendant  
 5 jurisdiction, attendant and related causes of action, arising  
 6 from the same facts, are also brought under California law,  
 7 including but not limited to violations of California Health &  
 8 Safety Code Sections 19955 *et seq.*, including Section 19959;  
 9 Title 24 California Code of Regulations; and California Civil  
 10 Code Sections 54 and 54.1 *et seq.*

11 5. Venue is proper in this court pursuant to 28 U.S.C.  
 12 1391(b) and is founded on the fact that the real property which  
 13 is the subject of this action is located in this district and  
 14 that plaintiff's causes of action arose in this district.

15 6. **Intradistrict Jurisdiction.** Under Civil Local Rule 3-  
 16 2(d), this case should be assigned to the San Francisco/Oakland  
 17 intradistrict as the real property that is the subject of this  
 18 action is located in the San Francisco/Oakland intradistrict and  
 19 plaintiff's causes of action arose in the San Francisco/Oakland  
 20 intradistrict (a property located in Sebastopol).

21  
 22 **PARTIES**

23 7. Plaintiff HOLLYNN D'LIL qualifies as a "physically  
 24 handicapped" or "physically disabled" person, as she requires the  
 25 use of a wheelchair for mobility. Plaintiff is informed and  
 26 believes that each of the defendants herein, including Doe  
 27 Trust 1, and Does 2-50, is the owner, constructive owner,  
 28 beneficial owner, successor-owner or successor-in-interest,

1 purchaser, trust, trustee, agent, ostensible agent, alter ego,  
 2 master, servant, employer, employee, representative, franchiser,  
 3 franchisee, joint venturer, partner, associate, parent company,  
 4 subsidiary, department, representative, or such similar capacity,  
 5 of each of the other defendants, and was at all times acting and  
 6 performing, or failing to act or perform, within the course and  
 7 scope of his, her or its authority as owner, constructive owner,  
 8 beneficial owner, successor-owner or successor-in-interest,  
 9 purchaser, agent, trust, trustee, ostensible agent, alter ego,  
 10 master, servant, employer, employee, representative, franchiser,  
 11 franchisee, joint venturer, partner, associate, parent company,  
 12 subsidiary, department, representative, or such similar capacity,  
 13 and with the authorization, consent, permission or ratification  
 14 of each of the other defendants, and is responsible in some  
 15 manner for the acts and omissions of the other defendants in  
 16 proximately causing the violations and damages complained of  
 17 herein, and have approved or ratified each of the acts or  
 18 omissions of each other defendant, as herein described.  
 19 Plaintiff will seek leave to amend when the true names,  
 20 capacities, connections, and responsibilities of each defendant  
 21 and Doe Trust 1, and Does 2-50, are ascertained. Alternatively,  
 22 plaintiff will also seek to liability against any un-joined party  
 23 pursuant to state and/or federal statutes and rules pertaining to  
 24 success-in-interest liability.

25       8. Plaintiff alleges on information and belief that at  
 26 all relevant times, defendants EAST WEST CAFÉ, aka East West  
 27 Bakery or East West Restaurant; HISAM SHABOON; DOE TRUST 1; DAVID  
 28 R. MADSEN, Trustee of DOE TRUST 1; CARLEEN MADSEN, Trustee of DOE

1 TRUST 1; HARRY E. POLLEY; JEAN E. POLLEY; and DOES 2 through 50,  
2 Inclusive, either were and/or now are the owners, operators,  
3 lessors and/or lessees of the public accommodation know as the  
4 East West Café in Sebastopol, located at or near Assessor's  
5 Parcel Number 004-243-008, and at or near 128 North Main Street.

6 9. The facilities of this business, including its  
7 entrances, dining, public restrooms, and other public facilities  
8 and amenities are each a "public accommodation or facility"  
9 subject to the requirements of California Health & Safety Code  
10 Sections 19955 et seq. and of the California Civil Code  
11 Sections 54, 54.1, and 54.3. At all times relevant to this  
12 complaint, defendants have held these facilities open to public  
13 use. Such facilities also constitute "public accommodations" or  
14 "commercial facilities" subject to the requirements of Sections  
15 302 and 303 of the Americans with Disabilities Act of 1990.

16  
17 **FACTUAL STATEMENT**

18 10. Defendants are required by law to provide accessible  
19 facilities on each occasion that "alterations, structural repairs  
20 or additions" were performed to such facilities pursuant to legal  
21 standards then in effect, per Section 19959 of the Health & Safety  
22 Code, and under Section 303 of the Americans With Disabilities Act  
23 (which governs "new construction" and "alterations").

24 11. On information and belief, each such facility has,  
25 since July 1, 1970, been newly constructed, and/or undergone  
26 "alterations, structural repairs, and additions," each of which  
27 has subjected the defendants and the subject restaurant's public  
28 facilities to disabled access requirements of Section 19959

1 Health & Safety Code, Title 24 of the California Code of  
2 Regulations, and/or, for such work occurring since January 26,  
3 1992, to the requirements of Section 303 of the Americans With  
4 Disabilities Act.

5 12. Plaintiff has had the construction history evaluated  
6 by legal representatives and is aware the restaurant's  
7 responsibility there under to remediate its inaccessible  
8 facilities.

9 13. Plaintiff visits the down town area regularly and has  
10 dined at the East West Café on multiple occasions. For more than  
11 two years, she has both spoken and written to its owners and  
12 operators seeking compliance, and has also communicated through  
13 legal representatives and official intermediaries. However,  
14 despite these informal requests, defendants refuse to comply with  
15 the law.

16 14. Barriers to disabled access at the restaurant include:  
17 the absence of an accessible landing at front entrance and  
18 obstructions stored within that area; further obstructions stored  
19 within the path of travel to the public restrooms; the  
20 inaccessible vestibule and entrances serving the restrooms; and  
21 the completely inaccessible nature of the restrooms themselves,  
22 which are narrow and cramped and provide no access space in the  
23 areas serving the toilet, entrance and sink. On information and  
24 belief, defendants 52 chair dining setup is inaccessible both in  
25 provision of clear floor space and unobstructed knee space.

26 15. As a result of the actions and failure to act of  
27 defendants, and each of them, and as a result of the failure to  
28 provide appropriate disabled accessible entrance, restroom and

1 dining amenities, plaintiff suffered and will suffer a loss of  
2 her civil rights to full and equal access to public facilities,  
3 suffered strain and exhaustion from attempting to negotiate  
4 barriers as well as pain and discomfort, and will suffer  
5 emotional distress, mental distress, mental suffering, mental  
6 anguish, which includes that humiliation, embarrassment, anger,  
7 disappointment and worry, normally and naturally expected and  
8 associated with a person with a physical disability being denied  
9 access to a public accommodation, all to her damages as prayed  
10 hereinafter in an amount within the jurisdiction of this court.

11 16. Over the last two years and continuing, plaintiff  
12 pays regular visits to the downtown Sebastopol area and has been  
13 denied access when patronizing the restaurant as a paying  
14 customer or in being deterred from the effort. Plaintiff would  
15 like to return and use the subject restaurant on a planned or  
16 spontaneous basis, but is unable to enjoy the safe full and equal  
17 access to which she is entitled.

18 17. On information and belief, a number of facilities in  
19 the subject building have been remodeled during the statutory  
20 period since July 1, 1970, triggering accessible "path of travel"  
21 requirements to each area of alteration, which includes, but is  
22 not limited to, accessible public sanitary facilities and a path  
23 of travel, complying with ADA and Title 24 standards. On  
24 information and belief, defendants have not complied with these  
25 legal obligations.

26 18. The "removal" of each of these barriers to use by  
27 disabled persons was "readily achievable" under the standards of  
28 Section 301(9) of the Americans With Disabilities Act of 1990 [42

1 U.S.C. 12181] at all times herein relevant. Section 303 of the  
2 ADA [42 U.S.C. 12183] and California law also required the  
3 removal of all such barriers upon performance of "alterations."

4 19. On information and belief, defendants continue to the  
5 present date to deny "full and equal access" to plaintiff and to  
6 all other disabled persons, in violation of California law,  
7 including Health & Safety Code Sections 19955 *et seq.*, Civil Code  
8 Sections 54 and 54.1, and Title 24 of the California Code of  
9 Regulations (a.k.a. California Building Code). Further, such  
10 denial of access to disabled persons also violates the  
11 requirements of Title III of the federal Americans With  
12 Disabilities Act of 1990, Sections 301 *et seq.* [42 U.S.C.,  
13 §§ 12181 *et seq.*] (Hereinafter also called the "ADA").

14  
15 **FIRST CAUSE OF ACTION:**

16 **BREACH OF STATUTORY PROTECTIONS FOR PHYSICALLY DISABLED PERSONS**

17 20. Plaintiff repleads and incorporates by reference, as  
18 if fully set forth again herein, the allegations contained in  
19 paragraphs 1 through 19, above.

20 21. Plaintiff is physically disabled under standards as  
21 defined by all California statutes using these terms. Plaintiff  
22 is also an "individual with a disability" as defined by  
23 Section 54(b) Civil Code, as well as Section 3(2) of the ADA.  
24 Each violation of the ADA, as plead hereinafter, is incorporated  
25 by reference as a separate violation of Sections 54(c) and  
26 54.1(d) California Civil Code.

27 22. Health & Safety Code Section 19955 provides in  
28 pertinent part:



1 (a) The purpose of this part is to insure  
2 that public accommodations or facilities constructed  
3 in this state with private funds adhere to the  
4 provisions of Chapter 7 (commencing with § 4450) of  
5 Division 5 of Title 1 of the Government Code. For  
6 the purposes of this part "public accommodation or  
7 facilities" means a building, structure, facility,  
8 complex, or improved area which is used by the  
9 general public and shall include auditoriums,  
10 hospitals, theaters, restaurants, restaurants,  
11 motels, stadiums, and conventions centers.

12 23. Health and Safety Code Section 19956, which appears in  
13 the same chapter as 19955, provides, in pertinent part: "[a]ll  
14 public accommodations constructed in this state shall conform to  
15 the provisions of Chapter 7 (commencing with § 4450) of Division  
16 5 of Title 1 of the Government Code...."

17 24. Section 19956 Health & Safety Code was operative July  
18 1, 1970, and is applicable to all public accommodations  
19 constructed or altered after that date. On information and  
20 belief, portions of the subject restaurant were constructed  
21 and/or altered after July 1, 1970, and portions of the subject  
22 building were structurally remodeled, altered and have undergone  
23 structural repairs or additions after July 1, 1970. Such  
24 construction required such building and its public accommodation  
25 facilities to be subject to the requirements of Part 5.5,  
26 Sections 19955, et seq., of the Health and Safety Code, which  
27 requires provision of access upon "alterations, structural  
28 repairs or additions" per Section 19959 Health & Safety Code, or

1 upon a change of occupancy (a form of "alteration").

2       25. Pursuant to the authority delegated by Government Code  
3 Section 4450, et seq., the State Architect promulgated  
4 regulations for the enforcement of these provisions. Effective  
5 January 1, 1982, Title 24 of the California Administrative Code  
6 adopted the California State Architect's Regulations and these  
7 regulations must be complied with as to any modifications of the  
8 subject building and its facilities occurring after that date.  
9 Any alterations of the building after January 1, 1982 required  
10 compliance with the Title 24 regulations then in effect,  
11 including that an accessible path of travel leading to such  
12 facility from the adjoining public right of way. Prior to 1982,  
13 similar requirements were incorporated into the law from the  
14 American Standards Association. On information and belief, one  
15 or more of the constructions of and alterations upon and  
16 modifications of the subject facilities occurred during the  
17 period of time that sections of the Health and Safety Code have  
18 provided that all buildings and facilities used by the public  
19 must conform to each of the standards and specifications  
20 described in the American Standards Association Specifications,  
21 or, as to construction occurring after January 1, 1982, to the  
22 standards of Title 24, the State Architect's Regulations.

23       26. Plaintiff is informed and believes and therefore  
24 alleges that defendants, and their predecessors in interest as  
25 owners, operators and/or lessors of the subject public  
26 accommodation (for which the defendants as current owners,  
27 operators and/or lessors of the building are responsible), and  
28 each of them caused the subject property to be constructed,

1 altered and maintained in such a manner that physically disabled  
2 persons were denied full and equal access to, within and  
3 throughout said facilities, and full and equal use of said  
4 building. Further, on information and belief, defendants and  
5 each of them have continued to maintain and operate such building  
6 and its facilities in such condition up to the present time,  
7 despite actual and constructive notice to such defendants, and  
8 each of them (which includes plaintiff's discussions with  
9 restaurant personnel, as well as her letters to defendants, and  
10 communications from legal and official representatives) that the  
11 configuration of the building were in violation of the Civil  
12 Rights of disabled persons, such as plaintiff. Such construction,  
13 modification, ownership, operation, maintenance and practices of  
14 such a public facility is in violation of law as stated in Part  
15 5.5, Sections 19955ff Health and Safety Code, Sections 54 and  
16 54.1, et seq., Civil Code, and elsewhere in the laws of  
17 California.

18 27. On information and belief, the subject building and  
19 the defendants and each of them have denied full and equal access  
20 to disabled persons in other respects due to non-compliance with  
21 requirements of Title 24 of the California Code of Regulations,  
22 and of other provisions of disabled access legal requirements.  
23 Additionally, maintaining the barriers specified in this  
24 complaint is independently a violation of both Title 24 of the  
25 California Building Code, and of Sections 54 and 54.1 Civil Code  
26 and their guarantee of "full and equal" access to all public  
27 facilities (as pled in the second cause of action, and also  
28 repleads and incorporated herein by reference, as if fully

1 restated hereafter), in conjunction with Section 19955ff, per  
2 James Donald v. Cafe Royalé (1990) 218 Cal.App.3d 168.

3 28. Injunctive Relief - The acts and omissions of  
4 defendants as complained of continue to have the effect of  
5 allowing defendants to wrongfully exclude Plaintiff, and other  
6 similarly situated members of the public who are physically  
7 disabled, from full and equal access to the subject restaurant.  
8 Such acts and omissions are the continuing cause of humiliation  
9 and mental and emotional suffering to plaintiff and other  
10 similarly situated persons in that these actions treat them as  
11 inferior and second class citizens and serve to discriminate  
12 against them, so long as defendants do not provide a properly  
13 accessible, safe and equal use of such facilities. Said acts  
14 have proximately caused and will continue to cause irreparable  
15 injury to Plaintiff and other similarly situated persons if not  
16 enjoined by this court.

17 29. Plaintiff seeks injunctive relief, pursuant to  
18 Section 19953 Health and Safety Code and Section 55 Civil Code,  
19 prohibiting those of the defendants that currently own, operate,  
20 and/or lease (from or to) the subject restaurant, from  
21 maintaining architectural barriers to the use by disabled persons  
22 of public accommodations and facilities, in violation of Part  
23 5.5, Sections 19955ff Health and Safety Code. Plaintiff seeks to  
24 require such defendants to create safe and properly accessible  
25 facilities.

26 30. Attorneys' Fees - As a result of defendants' acts and  
27 omissions in this regard, plaintiff has been required to incur  
28 legal expenses and hire attorneys in order to enforce plaintiff's

1 rights and those of other similarly situated persons, and to  
 2 enforce provisions of the law protecting access for the disabled,  
 3 and prohibiting discrimination against the disabled, and to take  
 4 such action both in her own interest and in order to enforce an  
 5 important right affecting the public interest. Plaintiff  
 6 therefore seeks recovery of all reasonable attorneys' fees,  
 7 litigation expenses and costs incurred, pursuant to the  
 8 provisions of Section 1021.5 of the Code of Civil Procedure.  
 9 Plaintiff also seeks recovery of her attorneys' fees and costs  
 10 pursuant to Section 19953 Health and Safety Code.

11 WHEREFORE, plaintiff prays for relief as hereinafter stated.

12  
 13 **SECOND CAUSE OF ACTION:**

14 **VIOLATION OF DISABLED RIGHTS ACT,**

15 **CIVIL CODE §§ 54, 54.1, 54.3 ET SEQ.**

16 **DENIAL OF FULL AND EQUAL ACCESS TO A PHYSICALLY DISABLED PERSON**

17 31. Plaintiff repleads and incorporates, as if fully set  
 18 forth again herein, the allegations contained in paragraphs 1  
 19 through 30, above.

20 32. At all times relevant to this action, California Civil  
 21 Code Sections 54 and 54.1 have provided that physically disabled  
 22 persons are not to be discriminated against because of physical  
 23 handicap or disability. Section 54 Civil Code provides:

24 Individuals with disabilities shall have the  
 25 same right as the general public to the full and free  
 26 use of the streets, highways, sidewalks, walkways,  
 27 public buildings, public facilities, including  
 28 hospitals, clinics, and physicians' offices, public

1 facilities, and other public places.

2 Section 54.1 Civil Code provides that:

3 (a)(1) Individuals with disabilities shall be  
4 entitled to full and equal access, as other members  
5 of the general public, to accommodations, advantages,  
6 facilities, medical facilities... and privileges of  
7 all common carriers, airplanes, motor vehicles... or  
8 any other public conveyances or modes of  
9 transportation... restaurants, lodging places,  
10 places of public accommodation and amusement or  
11 resort, and other places to which the general public  
12 is invited, subject only to the conditions or  
13 limitations established by law, or state or federal  
14 regulations, and applicable alike to all other  
15 persons.

16 33. California Civil Code Section 54.3 provides that any  
17 person or corporation who denies or interferes with admittance to  
18 or enjoyment of the public facilities as specified in Section 54  
19 and 54.1 Civil Code is liable for EACH such offense for the  
20 actual damages and any amount up to a maximum of three times the  
21 amount of actual damages but in no case less than \$1,000 and such  
22 attorneys' fees that may be determined by the Court in addition  
23 thereto, suffered by any person denied any of the rights provided  
24 in Sections 54 and 54.1, for services necessary to enforce those  
25 rights.

26 34. As a result of the actions and failure to act of  
27 defendants, and each of them, and as a result of the failure to  
28 provide appropriate disabled accessible guestrooms and restaurant

1 amenities, plaintiff suffered and will suffer a loss of her civil  
2 rights to full and equal access to public facilities, suffered  
3 strain and exhaustion from attempting to negotiate barriers as  
4 well as pain and discomfort, and will suffer emotional distress,  
5 mental distress, mental suffering, mental anguish, which includes  
6 that shame, humiliation, embarrassment, anger, disappointment and  
7 worry, normally and naturally expected and associated with a  
8 person with a physical disability being denied access to a public  
9 accommodation, all to her damages as prayed hereinafter in an  
10 amount within the jurisdiction of this court.

11 35. Plaintiff is a person with a disability within the  
12 meaning of Civil Code Sections 54 and 54.1 whose rights have been  
13 infringed upon and violated by the defendants. Plaintiff has  
14 been denied full and equal access on multiple occasions on each  
15 specific date of potential use in which full and equal access to  
16 such facility was denied or deterred occurring within two years  
17 of the filing of this complaint. On information and belief,  
18 defendants have failed to act to provide full and equal public  
19 access to their subject restaurant, and continue to operate in  
20 violation of the law and continue to discriminate against  
21 physically disabled persons by failing to allow access to their  
22 building who cannot enter or use facilities on a full and equal  
23 basis.

24 36. On information and belief, defendants were on notice  
25 of the requirements of the law relating to provision for full and  
26 equal disabled access. Especially as defendants were on full  
27 notice, each date that plaintiff's visits the area that  
28 defendants have continued to deny access to disabled persons

1 constitutes a new and distinct violation of plaintiff's right to  
2 full and equal access to this public facility, in violation of  
3 Sections 54 and 54.1, et seq. Civil Code. In the event of a  
4 default judgment against any particular defendant, plaintiff will  
5 seek an injunction requiring provision of accessible entrance,  
6 dining, path of travel and public restroom facilities, plus  
7 damages of \$1,000 for each occasion of attempted use or  
8 deterrence day for the two years proceeding the filing of this  
9 complaint, plus reasonable attorneys' fees, litigation expenses  
10 and costs as set by the court, until it is brought into full  
11 compliance with state and federal access laws protecting the  
12 rights of the disabled.

13 37. Plaintiff has been damaged by defendants' wrongful  
14 conduct and seeks the relief that is afforded by Sections 54.1,  
15 54.3 and 55 of the Civil Code. Plaintiff seeks actual damages,  
16 and statutory and treble damages against defendants for all  
17 periods of time mentioned herein. As to those of the defendants  
18 that currently own, operate, and/or lease (from or to) the  
19 subject restaurant, plaintiff seeks a preliminary and permanent  
20 injunctive relief to enjoin and eliminate the discriminatory  
21 practices and barriers that deny equal access for disabled  
22 persons, and for reasonable attorneys' fees.

23 38. WHEREFORE, plaintiff asks this Court to enjoin any  
24 continuing refusal by the defendants that currently own, operate,  
25 and or lease (from or to) the subject restaurant, to grant such  
26 access to plaintiff and other similarly situated disabled  
27 persons, or alternatively to enjoin operation of the subject  
28 restaurant as a public accommodation until such defendants comply



1 with all applicable statutory requirements relating to access to  
2 physically disabled persons, and that the Court award plaintiff  
3 her reasonable statutory attorneys' fees, litigation expenses and  
4 costs pursuant to Civil Code Section 55, Code of Civil Procedure  
5 Section 1021.5, and Health & Safety Code Section 19953, and as  
6 further prayed for herein.

7 WHEREFORE, plaintiff prays for damages and injunctive relief  
8 as hereinafter stated.

9  
10 **THIRD CAUSE OF ACTION:**

11 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

12 **42 USC §§ 12101ff**

13 39. Plaintiff repleads and incorporates by reference, as  
14 if fully set forth again herein, the factual allegations  
15 contained in paragraphs 1 through 38, above.

16 40. Pursuant to law, in 1990 the United States Congress  
17 made findings per 42 U.S.C. Section 12101 regarding physically  
18 disabled persons, finding that laws were needed to more fully  
19 protect "some 43 million Americans with one or more physical or  
20 mental disabilities;" that "historically society has tended to  
21 isolate and segregate individuals with disabilities;" that "such  
22 forms of discrimination against individuals with disabilities  
23 continue to be a serious and pervasive social problem;" that "the  
24 Nation's proper goals regarding individuals with disabilities are  
25 to assure equality of opportunity, full participation,  
26 independent living and economic self sufficiency for such  
27 individuals;" and that "the continuing existence of unfair and  
28 unnecessary discrimination and prejudice denies people with

1 disabilities the opportunity to compete on an equal basis and to  
2 pursue those opportunities for which our free society is  
3 justifiably famous..."

4 41. Congress stated as its purpose in passing the  
5 Americans with Disabilities Act (42 USC § 12101(b)):

6 It is the purpose of this act –

7 (1) to provide a clear and comprehensive  
8 national mandate for the elimination of  
9 discrimination against individuals with  
10 disabilities;

11 (2) to provide clear, strong, consistent,  
12 enforceable standards addressing discrimination  
13 against individuals with disabilities;

14 (3) to ensure that the Federal government plays  
15 a central role in enforcing the standards  
16 established in this act on behalf of individuals  
17 with disabilities; and

18 (4) to invoke the sweep of Congressional  
19 authority, including the power to enforce the 14th  
20 Amendment and to regulate commerce, in order to  
21 address the major areas of discrimination faced day  
22 to day by people with disabilities. (Emphasis  
23 added)

24 42. As part of the Americans with Disabilities Act, Public  
25 Law 101-336, (hereinafter the "ADA"), Congress passed "Title III  
26 - Public Accommodations and Services Operated by Private  
27 Entities" (42 U.S.C 12181ff). Among "private entities" which are  
28 considered "public accommodations" for purposes of this title are

1 identified as "a restaurant, bar or other establishment serving  
2 food or drink." (§§ 301(7) [42 U.S.C. 12181].)

3 43. Pursuant to Section 302 [42 U.S.C. 12182], "[n]o  
4 individual shall be discriminated against on the basis of  
5 disability in the full and equal enjoyment of the goods,  
6 services, facilities, privileges, advantages, or accommodations  
7 of any place of public accommodation by any person who owns,  
8 leases, or leases to, or operates a place of public  
9 accommodation."

10 44. Among the general prohibitions of discrimination  
11 included in Section 302(b)(1)(A) are the following:

12 § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. —

13 It shall be discriminatory to subject an individual  
14 or class of individuals on the basis of a disability  
15 or disabilities of such individual or class,  
16 directly, or through contractual, licensing, or other  
17 arrangements, to a denial of the opportunity of the  
18 individual or class to participate in or benefit from  
19 the goods, services, facilities, privileges,  
20 advantages, or accommodations of an entity."

21 § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL

22 BENEFIT — It shall be discriminatory to afford an  
23 individual or class of individuals, on the basis of a  
24 disability or disabilities of such individual or  
25 class, directly, or through contractual, licensing,  
26 or other arrangements with the opportunity to  
27 participate in or benefit from a good, service,  
28 facility, privilege, advantage, or accommodation that

1 is not equal to that afforded to other individuals."

2 § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. - It  
3 shall be discriminatory to provide an individual or  
4 class of individuals, on the basis of a disability or  
5 disabilities of such individual or class, directly,  
6 or through contractual, licensing, or other  
7 arrangements with a good, service, facility,  
8 privilege, advantage, or accommodation that is  
9 different or separate from that provided to other  
10 individuals, unless such action is necessary to  
11 provide the individual or class of individuals with a  
12 good, service, facility, privilege, advantage, or  
13 accommodation, or other opportunity that is as  
14 effective as that provided to others."

15 45. Among the specific prohibitions against  
16 discrimination in the ADA include the following:

17 § 302(b)(2)(A)(ii): "A failure to make  
18 reasonable modifications in policies, practices or  
19 procedures when such modifications are necessary to  
20 afford such goods, services, facilities, privileges,  
21 advantages or accommodations to individuals with  
22 disabilities..."

23 § 302(b)(2)(A)(iii): "A failure to take such  
24 steps as may be necessary to ensure that no  
25 individual with a disability is excluded, denied  
26 services, segregated or otherwise treated differently  
27 than other individuals because of the absence of  
28 auxiliary aids and services, unless the entity can

1 demonstrate that taking such steps would  
2 fundamentally alter the nature of the good, service,  
3 facility, privilege, advantage, or accommodation  
4 being offered or would result in an undue burden;"

5 § 302(b)(2)(A)(iv): "A failure to remove  
6 architectural barriers, and communication barriers  
7 that are structural in nature, in existing  
8 facilities... where such removal is readily  
9 achievable;"

10 § 302(b)(2)(A)(v): "Where an entity can  
11 demonstrate that the removal of a barrier under  
12 clause (iv) is not readily achievable, a failure to  
13 make such goods, services, facilities, privileges,  
14 advantages, or accommodations available through  
15 alternative methods if such methods are readily  
16 achievable." The acts and omissions of defendants  
17 set forth herein were in violation of plaintiff's  
18 rights under the ADA, Public Law 101-336, and the  
19 regulations promulgated thereunder, 28 CFR Part  
20 36ff.

21 46. The removal of each of the barriers complained of by  
22 plaintiff as hereinabove (at paragraph 14) alleged were – at all  
23 times on or after January 26, 1992 – "readily achievable."

24 47. Further, at all times herein mentioned, modification  
25 of or removal of these barriers was "readily achievable" under  
26 the factors specified in the Americans with Disabilities Act of  
27 1990, including but not limited to section 301(9) [42 U.S.C.  
28 12181], and the Regulations adopted thereto.

1           48. Further, if defendants are collectively able to  
2 "demonstrate" that it was not "readily achievable" for defendants  
3 to remove each of such barriers, defendants have failed to make  
4 the required services available through alternative methods which  
5 were readily achievable, as required by Section 302 of the ADA  
6 [42 U.S.C. 12182].

7           49. "Discrimination" is further defined under  
8 Section 303(a)(2) of the ADA, for a facility or part thereof that  
9 was altered after the effective date of Section 303 of the ADA in  
10 such a manner as to affect or that could affect the usability of  
11 the facility or part thereof by persons with disabilities, to  
12 include per Section 303(a)(2) [42 U.S.C. 12183], "a failure to  
13 make alterations in such a manner that, to the maximum extent  
14 feasible, the altered portions of the facility are readily  
15 accessible to and usable by individuals with disabilities,  
16 including individuals who use wheelchairs." Additionally, for  
17 alterations to areas of a facility involving a "primary  
18 function," discrimination under the ADA, per Section 303(a)(2)  
19 (42 U.S.C. 12183), also includes the failure of an entity "to  
20 make the alterations in such a manner that, to the maximum extent  
21 feasible, the path of travel to the altered area and the  
22 bathrooms, telephones, and drinking fountains serving the altered  
23 area, are readily accessible to and usable by individuals with  
24 disabilities." On information and belief, the subject building  
25 constitutes a "commercial facility," and defendants have, since  
26 the date of enactment of the ADA, performed alterations  
27 (including alterations to areas of primary function) to the  
28 subject building and its facilities, public accommodations, and

1 commercial facilities, which fail to provide facilities and paths  
2 of travel to such areas that are readily accessible to and usable  
3 by individuals with disabilities, in violation of Section  
4 303(a)(2), and the regulations promulgated thereunder, 28 CFR  
5 Part 36ff.

6 50. Pursuant to the Americans with Disabilities Act, 42  
7 USC 12188ff, Section 308, plaintiff is entitled to the remedies  
8 and procedures set forth in Section 204, subsection (a), of the  
9 Civil Rights Act of 1964 (42 USC 2000a-3, at subsection (a)), as  
10 plaintiff is being subjected to discrimination on the basis of  
11 disability in violation of this title or has reasonable grounds  
12 for believing that she is about to be subjected to discrimination  
13 in violation of Sections 302 and 303. On information and belief,  
14 defendants have continued to violate the law and deny the rights  
15 of plaintiff and of other disabled persons to access this public  
16 accommodation for the two years proceeding the filing of this  
17 complaint. Pursuant to Section 308(a)(2), "[i]n cases of  
18 violations of Section 302(b)(2)(A)(iv)... injunctive relief shall  
19 include an order to alter facilities to make such facilities  
20 readily accessible to and usable by individuals with disabilities  
21 to the extent required by this title."

22 51. As a result of defendants' acts and omissions in  
23 this regard, plaintiff has been required to incur legal expenses  
24 and attorney fees, as provided by statute, in order to enforce  
25 plaintiff's rights and to enforce provisions of the law  
26 protecting access for disabled persons and prohibiting  
27 discrimination against disabled persons. Plaintiff seeks  
28 recovery of all reasonable attorneys' fees, litigation expenses

1 (including expert fees) and costs, pursuant to the provisions of  
2 Section 505 of the ADA (42 U.S.C. 12205) and the Department of  
3 Justice's regulations for enforcement of Title III of the ADA (28  
4 CFR 36.505). Additionally, plaintiff's lawsuit is intended not  
5 only to obtain compensation for damages to plaintiff, but also to  
6 require the defendants to make their facilities accessible to all  
7 disabled members of the public, justifying "public interest"  
8 attorneys' fees pursuant to the provisions of California Code of  
9 Civil Procedure Section 1021.5.

10 WHEREFORE, plaintiff prays that this Court grant relief  
11 as hereinafter stated:

12  
13 **FOURTH CAUSE OF ACTION:**

14 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE DISABLED RIGHTS ACT**  
15 **FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

16 52. Plaintiff repleads and incorporates by reference, as  
17 if fully set forth again herein, the allegations contained in  
18 paragraphs 1 through 51 of this complaint.

19 53. Each violation of the Americans With Disabilities Act  
20 of 1990, as complained of in the Third Causes of Action  
21 hereinabove (the contents of which causes of action have been  
22 incorporated herein as if separately restated word for word  
23 hereafter), is also a violation of section 54(c) and section  
24 54.1(d) California Civil Code, further and independently  
25 justifying damages, injunctive relief, and other statutory relief  
26 per sections 54.3 and 55 California Civil Code, all as previously  
27 pled.

28 54. As a result of defendants' acts and omissions in



1 this regard, plaintiff has been required to incur legal expenses  
2 and attorney fees, as provided by statute, in order to enforce  
3 plaintiff's rights and to enforce provisions of the law  
4 protecting access for disabled persons and prohibiting  
5 discrimination against disabled persons. Plaintiff therefore  
6 seeks recovery of all reasonable attorneys' fees, litigation  
7 expenses (including expert fees) and costs, pursuant to the  
8 provisions of Section 55 of the Civil Code. Additionally,  
9 plaintiff's lawsuit is intended not only to obtain compensation  
10 for damages to plaintiff, but also to require the defendants to  
11 make their facilities accessible to all disabled members of the  
12 public, justifying "public interest" attorneys' fees pursuant to  
13 the provisions of California Code of Civil Procedure Section  
14 1021.5.

15 WHEREFORE, plaintiff prays for damages and injunctive  
16 relief as hereinafter stated.

17  
18 **FIFTH CAUSE OF ACTION:**

19 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT**  
20 **FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

21 55. Plaintiff repleads and incorporates by reference, as  
22 if fully set forth again herein, the allegations contained in  
23 paragraphs 1 through 54 of this complaint.

24 56. Each violation of the Americans With Disabilities Act  
25 of 1990, as complained of in the Third Causes of Action  
26 hereinabove (the contents of which causes of action have been  
27 incorporated herein as if separately repled), is also a violation  
28 of section 51(f) of the Unruh Civil Rights Act, further and

1 independently justifying damages of \$4,000 per offense,  
2 injunctive relief, and other statutory relief per Section 52 and  
3 common law decision.

4 57. As a result of defendants' acts and omissions in  
5 this regard, plaintiff has been required to incur legal expenses  
6 and attorney fees, as provided by statute, in order to enforce  
7 plaintiff's rights and to enforce provisions of the law  
8 protecting access for disabled persons and prohibiting  
9 discrimination against disabled persons. Plaintiffs therefore  
10 seek recovery of all reasonable attorneys' fees, litigation  
11 expenses (including expert fees) and costs, pursuant to the  
12 provisions of Section 55 of the Civil Code. Additionally,  
13 plaintiff's lawsuit is intended not only to obtain compensation  
14 for damages to plaintiff, but also to require the defendants to  
15 make their facilities accessible to all disabled members of the  
16 public, justifying "public interest" attorneys' fees pursuant to  
17 the provisions of California Code of Civil Procedure Section  
18 1021.5.

19 WHEREFORE, plaintiff prays for damages and injunctive  
20 relief as hereinafter stated.

21  
22 **SIXTH CAUSE OF ACTION:**

23 **VIOLATION OF GOVERNMENT CODE SECTION 12948**

24 58. Plaintiff repleads and incorporates by reference,  
25 as if fully set forth again herein, the factual allegations  
26 contained in paragraphs 1 through 57 of this complaint.

27 59. Defendants' actions are in violation of Government  
28 Code Section 12948, and the corresponding Civil Code Sections 51,

1 54, and 54.1.

2 60. Plaintiff seeks injunctive relief, statutory and  
3 compensatory damages, punitive damages, and attorneys fees under  
4 the FEHA.

5 Wherefore, plaintiff prays that the court grant relief as  
6 requested herein below.

7  
8 **PRAYER**

9 WHEREFORE, plaintiff prays for an award and relief as  
10 follows:

11 1. That those of the defendants that currently own,  
12 operate, and or lease (from or to) the subject building, parcel,  
13 restaurant business, and their facilities, known as East West  
14 Café, including any subsequent successors in interests and/or  
15 parties controlling the litigation, be preliminarily and  
16 permanently enjoined from operating and maintaining these public  
17 facilities as public accommodations and commercial facilities, so  
18 long as disabled persons are not provided full and equal access  
19 to the accommodations and facilities, in violation of provided by  
20 Sections 54, 54.1, and 55 et seq., of the Civil Code, Sections  
21 19955 et seq. Health & Safety Code, Sections 4450, et seq.  
22 Government Code, the American Standard Specifications  
23 (A117.1961), or such other standards, including those of the  
24 State Architect's Regulations for Handicapped Access, as found in  
25 Title 24 of the California Code of Regulations or other  
26 regulations as are currently required by law; and that defendants  
27 be ordered to come into compliance with the Americans with  
28 Disabilities Act of 1990, including an order that those of the

1 defendants that currently own, operate, and/or lease (from or to)  
2 the subject restaurant, inter alia, "alter the subject facilities  
3 to make such facilities readily accessible to and usable by  
4 individuals with disabilities," and institute reasonable  
5 modifications in policies and practices, per Section 308 of  
6 Public Law 101-336 (the ADA);

7       2. General, compensatory, and statutory damages, and all  
8 damages as afforded by Civil Code Sections 54.3, including treble  
9 damages, for each violation and each date of use or deterrence on  
10 which defendants have denied to plaintiff equal access for the  
11 disabled, and for the period commencing two years proceeding the  
12 filing of this complaint, according to proof.

13       3. General, compensatory, and statutory damages, and all  
14 damages as afforded by Civil Code Sections 52, including treble  
15 damages, for each violation and each date on which defendants  
16 have denied to plaintiff equal access for the disabled under  
17 Title III of the ADA, and for the period commencing two years  
18 proceeding the filing of this complaint, according to proof.

19       4. Attorney's fees, litigation expenses and costs  
20 pursuant to Sections 54.3 and 55 of the Civil Code, Section 19953  
21 Health & Safety Code, Section 1021.5 Code of Civil Procedure, and  
22 Section 505 of the ADA;

23       5. For all costs of suit;

24       6. Prejudgment interest pursuant to Section 3291 of the  
25 Civil Code;

26       7. Such other and further relief as the Court deems just

27 ////  
28

1 and proper.  
2

3 Dated: May 17, 2007

THIMESCH LAW OFFICES  
TIMOTHY S. THIMESCH

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6 \_\_\_\_\_  
Attorneys for Plaintiff  
7 HOLLYNN D'LIL

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury for all claims for which a  
10 jury is permitted.  
11

12  
13 Dated: May 17, 2007

14 

15 \_\_\_\_\_  
By: TIMOTHY S. THIMESCH  
16 Attorneys for Plaintiff  
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